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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH:BILASPUR

Criminal Appeal No.950 of 2001.

APPELLANT (In Jail) : Madhuram alias Madhoram son of Penga Ram, aged about 55 years, occupation Agricultural, resident village Jiwliya, P.S.-Lakhanpur, Tehsil - Ambikapur, Distt. Surguja (CG).

V E R S U S

RESPONDENT : State of Chhattisgarh.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE AGAINST THE JUDGEMENT,CONVICTION AND SENTENCE PASSED BY FIRST A.S.J., AMBIKAPUR, DISTT. SURGUJA VIDE ON DATED 27-7-2001 IN SESSION TRIAL NO. 105/2000.

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

8-2-2007

Mr. V.C. Ottalwar, Advocate with Mr. Ganesh Prasad Gupta, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 27-7-2001 passed by the 1st Additional Sessions Judge, Ambikapur in Sessions Trial No.105/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months. However, learned trial Court acquitted co-accused Habalsai.

The case of the prosecution is that deceased Jagan Ram was brother-in-law (Bahnoi) of accused/appellant Madhu Ram, Kendi Bai (PW-2) is wife of Jagan Ram (since deceased) and sister of accused/appellant Madhu Ram. Co-accused Habalsai (acquitted) is son of accused/appellant Madhu Ram. Both accused/appellant Madhu Ram and deceased Jagan Ram had sown

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groundnuts in their fields adjacent to each other. The groundnuts of accused Madhu Ram were stolen, he was suspecting that his groundnuts have been stolen by his brother-in-law Jagan Ram (since deceased), therefore, on Friday, some altercation and scuffle took place between the two. On Sunday night, Jagan Ram went to his field to watch the crop of groundnuts, he was sleeping in a hut (Jhala), during night he was assaulted with a spade on head as a result of which he succumbed to the injuries sustained by him in the night itself. On Monday morning when the wife of Jagan Ram namely, Kendi Bai (PW-2) went to the field, she saw that her husband Jagan Ram was still sleeping, therefore, she went near Jagan Ram, found him in injured condition, there was an injury on the left parietal bone and blood was oozing out of the injury. She came and informed Bal Kumar who also went to the field and saw the dead body of Jagan Ram, there was an injury on the left parietal bone, blood was present on the injury and one spade was also lying there. Therefore, he gave merg intimation Ex.P-2 in Police Station: Lakhanpur mentioning therein that there was a quarrel between accused/appellant Madhu Ram and the deceased, as Madhu was suspecting that Jagan Ram has stolen his groundnuts, therefore, he has suspicion that Madhu has committed the murder of his father Jagan Ram. Based on the above merg intimation, the Station House Officer, Police Station: Lakhanpur, registered the F.I.R. Ex.P-1. He left for the scene of occurrence and prepared the site plan Ex.P-3.

The Investigating Officer gave notice Ex.P-4 to the Panchas and thereafter, prepared the inquest Ex.P-5 on the body of Jagan Ram. On 25th

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आदेश पत्रक (पूर्वानुबद्ध)

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January, 2000, the Investigating Officer took into possession plain soil and bloodstained soil from the place of occurrence as also the spade, weapon of offence, stained with blood under Ex.P-6. Clothes of the deceased were taken into possession under Ex.P-7. Accused Madhu Ram while in police custody gave memorandum Ex.P-8 on 26-1-2000 and co-accused Habalsai gave memorandum Ex.P-9 on 26-1-2000, in pursuance of that the spade was recovered at the instance of Habalsai under Ex.P-10. The body of Jagan Ram was sent to Mini Primary Health Centre, Salka (Udaipur) under Ex.P-11 where Dr. A.R. Jayant (PW-9) conducted post-mortem, prepared report Ex.P-19 and opined that the cause of death is intracranial haemorrhage due to fracture of skull bone which is homicidal in nature. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar under Ex.P-16 from where the report Ex.P-17 was received. The recovered articles were also sent to the Serologist from where the report Ex.P-21 was received.

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 1st Additional Sessions Judge, Ambikapur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined nine witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material

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appearing against them in the prosecution evidence and stated that they are innocent.

Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced accused/appellant Madhu Ram as aforementioned, however acquitted co-accused Habalsai, son of Madhu Ram.

We have heard Mr. V.C. Ottalwar, learned Advocate with Mr. Ganesh Prasad Gupta, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

At the outset, Mr. Ottalwar submitted that in this case there is no direct or ocular evidence and the accused has been convicted merely on the ground of circumstantial evidence of Bal Kumar (PW-1), son of Jagan Ram & Kendi Bai (PW-2), wife of Jagan Ram. Their evidence is only to the effect that on Friday accused/appellant Madhu Ram assaulted Jagan Ram on the ground that he had stolen his groundnuts, therefore, they had suspicion that Jagan Ram has been murdered by Madhu Ram and his son Habalsai. Learned counsel further submitted that recovery of the weapon of offence spade was effected from the place of occurrence on 25th January, 2000 itself, whereas memorandum of accused Madhu Ram was taken on 26-1-2000 i.e. one day after the recovery of the article. Therefore, this recovery is of no use and based on that recovery, the accused cannot be connected with the crime in question. In the circumstances, merely on the basis of suspicion of Bal Kumar (PW-1) & Kendi Bai (PW-2), the accused has been convicted.

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Merely on the ground of suspicion however strong it may be the accused cannot be convicted. The prosecution is required to establish the crime against the accused beyond reasonable doubt.

On the other hand, Mr. Gwalre supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the judgment of the trial Court, the evidence and the relevant record. It is true that in this case there is no ocular and direct evidence. Conviction rests on the circumstantial evidence. As per the settled law, in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

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In the present case, learned trial Court has convicted the accused on the following circumstances: -

1. The accused was suspecting that deceased Jagan Ram had stolen his groundnuts and in that connection, on Friday some altercation and scuffle also took place between the accused & the deceased, as per the evidence of Phulsai (PW-3), the accused stated that if the Panchayat is not able to settle their dispute, then he will commit the murder of Jagan Ram with an axe.
2. The bloodstained spade was recovered at the instance of the accused.

As far as the first circumstance is concerned, Bal Kumar (PW-1), son the deceased, has stated in his evidence that groundnuts were sown by his father and maternal uncle Madhu Ram in the adjoining fields, his maternal uncle was suspecting that his groundnuts have been stolen by Jagan Ram (his father), in that connection Madhu Ram had beaten his father and Madhu Ram also said that he will convene the Panchayat, but the Panchayat could not be held. Thereafter, Madhu Ram quarreled with his father in the field, his father came and disclosed that fact to his mother. On Sunday morning his brother Kariman, sister Ratiyanu and brother-in-law Dahruram went to the field to collect groundnuts, they returned along with his father to their house thereafter, his brother-in-law and sister left for their residence, but in the evening his father again went to the garden of groundnuts. He was sleeping in the Jhala in the night. On Monday morning, his nephew Ajjuram & mother Kendi Bai went to the garden of groundnuts, they saw that his father

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was still sleeping, they tried to wake him up, but his father was dead, there were injuries on ear, nose & parietal bone, and blood was present. He was at his residence, thereafter, coming to know about this fact, he also went to the garden of groundnuts and saw injuries on the person of his father. Therefore, he lodged the reports Exs.P-1 & P-2 in Police Station: Lakhanpur.

Kendi Bai (PW-2) has stated in her evidence about the dispute between her husband and brother. On Friday her husband was beaten by Madhu and he received injury on head. On Saturday also her husband was beaten by the accused. Repeatedly the accused was saying that Jagan Ram has stolen his groundnuts, therefore, he will convene Panchayat. Her husband used to remain in Jhala in the garden of groundnuts. On Sunday, her husband went to the field and was sleeping in the Jhala, next day morning i.e. Monday she along with her nephew Bhajju went to the field for collecting groundnuts. She saw that her husband was lying in the Jhala, she tried to wake him up, but she saw that her husband was already dead, there were injuries on the parietal region, blood was present, therefore, her grandson went to the house and informed. She has suspicion that the accused persons have attacked her husband with the axe.

The above evidence of these two witnesses (PW-1 & PW-2) is nothing more than suspicion and beyond suspicion the prosecution has not been able to bring on record any circumstance to connect the accused with the crime in question. Even though it has been stated that the accused was threatening the deceased and even on Friday he gave beating to the

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deceased and tried to convene the Panchayat also, but nothing has been brought on record by adducing any evidence of independent witness that any Panchayat was convened and the accused was accusing the deceased that he has stolen his groundnuts, no report was lodged by the complainant in the Police Station regarding beating given by the accused on Friday i.e. two days before the incident, nor any independent witness has been examined to show that on Friday any beating was given by the accused and that was made known to the villagers. Suspicion however strong, merely on the basis of suspicion the accused cannot be held guilty unless some other strong circumstantial evidence is brought on record to indicate that from those circumstances inference can be drawn that the accused was the author of the crime in question.

As far as the second circumstance recovery of bloodstained spade at the instance of the accused is concerned, it is admitted position that the spade in question was of the deceased and the same was taken into possession on 25-1-2000 from the place of occurrence itself, whereas the memorandum based on which the spade said to be recovered was recorded on 26-1-2000 i.e. one day after the day of recovery of the spade, as such, the said recovery of the spade cannot be held to be at the instance of the accused, because the spade was already recovered before the memorandum was given by the accused and that recovery was from open place, as the spade was lying near the body of the deceased. Therefore, on the basis of recovery of the spade, the accused cannot be connected with the crime in question.

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As far as the evidence of Phulsai (PW-3) is concerned, this witness has been declared hostile, as he has not supported the prosecution case. He has stated in his evidence that one day Madhu Ram came to his house and said that Jagan Ram has stolen his groundnuts, therefore, the matter be decided in the Panchayat, but the matter could not be decided, therefore, accused Madhu Ram said that if the matter is not settled in the Panchayat, then he will commit the murder of Jagan Ram with an axe. But this witness in para 4 of cross-examination has stated that this fact was not disclosed by him to any one and that is why Bal Kumar (PW-1), son of the deceased and Kendi Bai (PW-2), wife of the deceased have not stated anything about the said threatening given by the accused as is stated by this witness. This witness had not disclosed this fact to any one in the village, as such, no reliance can be placed on such an evidence.

Therefore, the prosecution has utterly failed to connect the accused with the murder of Jagan Ram by producing a cogent, clear, legal and clinching circumstantial evidence. For the foregoing reasons, conviction and sentence of accused/appellant Madhu Ram is not based on legal evidence, as such same cannot be sustained.

In the result, the appeal of accused/appellant Madhu Ram @ Madho Ram succeeds and the same is allowed. He is acquitted of charge under Section 302 of the I.P.C. Resultantly, his conviction and sentence imposed under Section 302 of the I.P.C. are set aside. It is stated that the accused/

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Soma	appellant is in detention since more than six years, he be set at liberty forthwith, if not required in any other case. **Sd/-** **Acting Chief Justice**	**Sd/-** **Sunil Kumar Sinha** **Judge**

Appellant/Respondent